IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.10795 OF 2004

M/s. Bharat Petroleum Corporation)
Ltd., A Company incorporated under)
the Indian Companies Act, 1956,)
and having its Registered office)
at Bharat Bhavan, 4 & 6 Currimbhoy)
Road, Ballard Estate, Mumbai 400 038.)..Petitioners
(Org.Defendants)

Versus

1. Dr.Rustom Behramji Colah)
2. Dr.Jamsed Nawroji Wajifdar)
3. Keki Rustom Alpaiwalla)
4. Dr.Aspi Framroze Golwala)
5. Rustom Behramjee Fardoonji Golwala)
6. Burjor Hormusji Antia)
7. Darius Bejon Bhappu)
The Trustees of Mbona Hos.Trust,)
Victoria Road, Mumbai 400 027)..Respondents
(Org.Plaintiffs)

Mr.S.G.Page with S.R.Page for petitioners

Mr.P.S.Dani for respondents

CORAM : DR.D.Y. CHANDRACHUD, J.

DATE : 18TH JULY, 2006.

ORAL JUDGMENT :

. Rule, with the consent of counsel, made returnable forthwith. At the request of the counsel, the petition is taken up for hearing and final disposal.

1. On 27th August 1956, an Indenture of Lease was executed between Burmah Shell Oil Storage & Distributing Company of India Ltd. ("Burmah Shell"), the predecessor-in-title of the Petitioners and the Respondents. By and under the lease a plot of land admeasuring 888 sq. yards being C.S. No.549, Mazgaon Division was leased out by the respondents to Burmah Shell. The term of the lease was for a period of 20 years commencing from 1st January 1956 and the monthly rent was fixed at Rs.550/=. Clause 3(c) of the lease

deed contained the following covenant :-

> "(c) If the Lessee shall have given to the Lessor not less than two calender month’s notice in writing prior to the expiration of the term preserved herein expressing a desire to renew the lease and shall have duly observed and performed all the terms and conditions hereof the Lessor will grant to the Lessee a new lease of the demised premises by way of renewal for such further term of years not exceeding 20 years as the Lessee shall desire in its absolute discretion to commence from the date of expiry hereof at the same rent and upon the same terms and conditions in all respects as are reserved and contained herein save and except this present covenant for renewal unless it is specifically agreed by both parties that a further like option shall be included in the renewal lease."

. The contention of the petitioners is that on 22nd October 1975 a communication was addressed by Burmah Shell to the Respondents by which the right of renewal for a further period of 20 years was exercised. On 24th January 1976 Parliament enacted the Burmah Shell (Acquisition of its Undertakings in India) Act, 1976 by which the right, title, interest and liabilities of Burmah Shell in relation to its undertakings in India stood and transferred to and vested in the Central Government.

. The Government of India issued a Notification under Section 7 of the Act on the same date and on 2.2.1976 a fresh certificate of incorporation was issued by which the name of the nationalised company was changed to Bharat Refineries Ltd. The name of Bharat Refineries Ltd. was changed to Bharat Petroleum Corporation Ltd. in August 1977.

. On 4.2.1982 the respondents served a notice on the petitioners terminating the tenancy. In 1982 a suit for eviction was instituted in the Court of Small Causes at Mumbai seeking possession of the demised premises on the ground that the respondents who are trustees of the

Masina Hospital Trust required the premises reasonably and bonafide for the purpose of the trust.

2. The petitioners filed their written statement. Issues were framed and evidence was adduced before the Trial court. By an order dated 14.3.2006 the Trial court allowed an application seeking amendment of the plaint to place certain additional particulars relating to the requirement of the respondents on record. The suit was decreed by the Court of Small Causes on 23.2.2001 under Section 13(1)(g) of the Bombay Rents, Hotel, Lodging House, Rates Control Act, 1947. The Appeal carried by the petitioners was dismissed by the appellate bench of the Small Causes Court on 9.9.2004. The appellate bench of the Small Causes Court has affirmed the view of the learned trial judge that the suit premises were required reasonably and bonafide by the Trust, which conducts the Masina Hospital. The appellate bench noted that sufficient particulars have been pleaded with regard to the bonafide requirement of the landlord. The number of patients has increased, the number of departments in the hospital has increased and residential quarters are required for the members of the staff. The evidence on record showed that there were

sufficient particulars regarding the requirement of doctors, nurses, staff members and other employees of the hospital. The Trust came to be constituted under a Scheme which was sanctioned by this Court on 9.1.1952. The object of the trust was to treat the poor and needy in the society. The evidence on record was held sufficient to disclose that in the vicinity of Masina Hospital poor as well as middle class people reside. So far as the issue of hardship is concerned the appellate bench has held that since the petitioners have four other petroleum pumps in the vicinity of the suit premises, the closure of one petrol pump will not cause inconvenience to the petitioners. A finding was recorded that the petitioners have not proved that the lease deed was renewed prior to its expiry on 22.10.1975.

3. On behalf of the petitioners it has been argued that Section 13(1)(g) has no application in a situation whether the premises consist of open land. Hence, it was submitted that the case of the landlord, if at all, falls only under Section 13(1)(i) and the decree which was passed by the trial court and confirmed in appeal therefore should be set aside.

4. There is no merit in the submission. The ground for eviction under Section 13(1(g) is that the premises are reasonably and bonafide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or, where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust. The expression "premises" is defined in section 5(8) of the Act as follows :

> "5(8) "premises" means -
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> (a) any land not being used for agricultural purposes;
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> (b) any building or part of a building let or given on licence separately other than a farm building including -
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> (i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building.

(ii) any furniture supplied by the landlord for use in such building or part of a building

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging houses"

The expression ‘premises’ therefore includes land which is not used for agricultural purposes.

5. Section 13(1)(i) applies where the premises consist of land, and such land is reasonably and bonafide required by the landlord for the erection of a new building. Section 13 (1) (i) therefore applies in a specific situation when the premises consist of land where the land is required for the erection of a new building. Section 13(1)(i) was introduced by the Legislature as a means of encouraging construction of new premises. That however, does not restrict the operation of section 13(1)(g) which applies to all premises which fall within the description of that expression.

6. The Judgment of the Division Bench of this Court in **Bharat Petroleum Corporation vs. Anil Noel Rodrigues** (Writ Petition No.1751 of 2001 along **with** companion matters decided on 4.11.2004) arose on a reference to the Division Bench upon a conflict of views of learned single judges of this court. A learned single judge (Mr. Justice T.K.Chandrashekhar Das) had in Abdul Reheman's case (1999 (2) Mh.L.J. 592) held that where the landlord needed the premises for his own occupation after completion of the construction of the new building, the case would fall under Section 13(1)(g) and not under section 13(1)(i). Consequently the view taken in the aforesaid judgment was to the effect that in such a case the Court dealing with an eviction suit under the Rent Act would have to consider the issue of comparative hardship under Section 13(2). The learned single judge held that even though the landlord seeks eviction under section 13(1)(i) but if it has come in the pleading and in the evidence that the construction proposed to be done in the premises is for the purpose of his own use and occupation, then notwithstanding the claim made by the landlord based on 13(1)(i), the provisions of sub-section 2 of Section 13 will apply and the court can pass a decree for eviction after establishing the

reasonableness and bona fides of the landlord's requirement and considering the comparative hardship caused to the landlord and tenant as envisaged under section 13(2) of the Act. The Division Bench held in the reference that the learned single judge in **Abdul Reheman's** case had not considered two earlier judgments of learned single judges in **Badriprasad K. Agarwal and ors. vs. The Premier Garage & Ors.** (1980 BCR 12) and in **Vasant Bandoo Kulkarni vs. Yasin Ahmed Mujawar** (1998(3) Mh.L.J.62). The Division Bench held that where the landlord seeks eviction on the ground that he wants to construct a building on premises consisting of land the issue of comparative hardship was not required to be gone into. The view which was therefore taken in Reheman's case was over ruled. The judgment of the Division Bench will not carry the case of the petitioner any further as it has not been held that Section 13(1)(g) will not apply to a situation where the premises consist of land, even though eviction is sought on the ground of the landlord's bonafide requirement. The judgment of the Division Bench is that when eviction is sought by the landlord on a ground relatable to Section 13(1)(i), it is under that provision that the case has to be adjudicated upon. To such a case,

Section 13 (1)(g) or the requirement of assessing comparative hardship cannot be applied. The judgment of the Division Bench, however, does not preclude the landlord from suing for eviction under Section 13(1)g where the premises consist of open land. The reference to the Division Bench was on a specific question which has been answered as mentioned herein above.

7. In the present case there are concurrent findings of both the courts below to the effect that the land belongs to a public charitable trust. The trust conducts a hospital. The need of hospital has been held to be reasonable and bonafide.

8. The second submission urged on behalf of the petitioner was that the suit which was instituted in the year 1982 was premature. This submission proceeds on the foundation that on 22.10.1975 the lease was duly renewed. There is a finding of fact that the letter of renewal dated 21.10.1995 has not been served. However, for the purpose of this proceeding the court may proceed on the basis that the lease was in fact renewed. Clause 3 (c) of the Lease Deed empowers the lessee to renew the

lease by giving not less than two calendar month's notice prior to expiration of the term, to obtain a further renewal for a term not exceeding 20 years subject to the condition that the terms and conditions of the lease are fulfilled. Clause 3(c) makes it clear that subsequent renewals would be on the same terms and conditions save and except "this present covenant for renewal" unless it was specifically agreed by both the parties that a further like option shall be included in the renewed lease.

9. At this stage it would be necessary to note the provisions of The Burmah Shell (Acquisition of Undertakings in India) Act, 1976. Sub-section (1) of Section 5, provides that "where any property is held in India by Burmah Shell under any lease or under any right of tenancy, the Central Government shall, on an from the appointed day, be deemed to have become the lessee or tenant, as the case may be in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government." The effect of Section 5(1)

in the present case is that the lease which was executed in favour of Burmah Shell would enure to the benefit of the Central Government as if the lease had been granted to the Central Government. The petitioner is the government company that has stepped into the shoes of the Central Government.

10. Next Section 5(2) provides that "on the expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by the Central Government be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day." The effect of sub-section 2 of Section 5 is that the option to renew that was conferred upon Burmah Shell under clause 3(c) of the lease would be available on the same terms and conditions to the Central Government. Clause 3(c) makes it clear that once the lease is renewed for 20 years the same terms and conditions would govern the lease during the renewed term save and except for the covenant for renewal unless both parties agreed that such an option for further renewal shall be included in the renewed lease. Admittedly no such further option had been agreed upon between the parties.

11. The provisions of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 came up for consideration before the Supreme Court in Bharat Petroleum Corporation Ltd. vs. P.K.Kesavan 2004 AIR SCW 1989. The Supreme Court held that Sub-section (1) of Section 5 provided for a legal fiction in terms whereof Bharat Petroleum Corporation became a lessee in respect of the leasehold. That legal fiction, would have to be given full effect. The Supreme Court held that Section 5(2) and Section 7(3) of the Act were required to be given a purposive meaning, having regard to the object and purpose which the statute seeks to achieve. The Central Government by reason of the provisions of the said Act acquired running business undertakings of Burmah Shell dealing in distribution and marketing of petroleum products. There ought to be no let or hindrance in the Central Government achieving the object of the Act. In the circumstances, if the Government renewed the lease, the benefit of the renewal would stand.

12. The question as to whether a perpetual right of

renewal can be held to exist in law has been considered by the Supreme Court in the decision in State of U.P. and Ors. vs. Lalji Tandon (2004) 1 SCC page 1. The Supreme Court confirmed the correctness of the following propositions of law which were laid down by the Andhra Pradesh High Court, in para 15 of the judgment:

> "(i) In India, the law does not prohibit a perpetual lease; clear and unambiguous language would be required to infer such a lease. If the language is ambiguous the court would opt for an interpretation negating the plea of the perpetual lease;
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> (ii) To find an answer to the question whether a covenant for renewal contained in the lease deed construed properly and in its real context, entitles the tenant to continue as long as he chooses by exercising the option of renewal at the end of each successive period of 5 years subject to the same terms and conditions depends on the deed of lease being read as a whole and an effort made to ascertain the intention of the parties while entering into the contract. No

single clause or term should be read in isolation so as to defeat other clauses. The interpretation must be reasonable, harmonious and be deduced from the language of the document;

(iii) The court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous."

13. In the present case the petitioner has had the benefit of one renewal of the term of lease. The original term of lease expired in 1976. Even thereafter on the assumption that the lease was renewed either by the exercise of the option of renewal or by operation of law, the renewed term also expired in 1996. Clause 3(c) of the covenants of the lease deed specifically excludes a perpetual right of renewal. Clause 3(c) postulates that during the renewed term, the lease would be subject to the same terms that governed the original term of

lease except for the clause for renewal, unless parties specifically agree otherwise. Here there is no agreement that the petitioners would be entitled to any further renewals. The Court leans against a perpetual right of renewal even when the clause of renewal provides a renewal on the same terms and conditions. Proposition (iii) culled out from the judgment of the Supreme Court Lalji Tandon reads that in such a case the clause would be construed to allow a right of one renewal but not a second or third renewal. Here, the term of the renewed lease is also over. There is no merit in the submission that the suit was premature. Even if the lease stood renewed, that would not deprive the landlord of his right to sue for eviction on a ground for eviction being made under the Rent Act. The judgment of the Appellate bench of the Small Causes Court confirming the order of eviction does not warrant interference under Article 227 of the Constitution.

14. For the reasons stated above, the Petition is dismissed.

15. On the oral request of the petitioner the decree for eviction shall not be executed for a period of eight

weeks from the date of this order subject to the filing of the usual undertaking in this court within four weeks.

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